IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 1584 of 2003

Between:

Sikinder Ali Khan, rep. by his GPA
E.Jitender Reddy, S/o.Venkat Ram Reddy, aged about 32 yrs,
Occ:Contractor, R/o.Kottapally Village, Timmapur Mandal,
Karimnagar District … Petitioner

AND

1 State of A.P., rep. by Secretary
Forest Dept., Secretariat, Hyderabad
2 The Prl. Chief Conservator of Forest, Aranya Bhavan, Saifabad, Hyderabad
3 The Conservator of Forest, Adilabad Circle, Adilabad
4 The Joint Collector/Forest Settlement Officer, Adilabad District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order direction or writ particularly one in the nature of writ of mandamus a) declaring the action of the respondents in rejecting the application made by the petitioner Dt.20/11/1997 through Proc.Dt.05/04/2002 NO.15629/97 MA for permission to cut and transport the forest growth standing in survey No.10/2 admeasuring 14 acres 31 guntas and survey and Survey No.112.20 guntas, total 15 acres 11 guntas of land situated at Udampur Village, Kadem Mandal, Karimnagar District on the ground that the land is included in Reserve Forest without any basis. b) A direction may be issued to grant permission to the petitioner to cut and Transport the forest growth standing Survey No.10/2 admeasuring 14 acres 31 guntas and Survey No.112.20 guntas total 15 acres 11 guntas of land situated at Udampur Village, Kadem Mandal, Karimnagar District.

Counsel for the Petitioner: MR.M.RAMA RAO

Counsel for the Respondents : GP FOR FORESTS

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No.1584 of 2003

O R D E R :

The petitioner herein, through his General Power of Attorney of the owner of the land in question viz. E.Jitender Reddy, filed this Writ Petition, *inter alia,* seeking to assail by way of Writ of Mandamus the impugned proceedings dated 05.09.2002 passed by the third respondent herein rejecting the request for permission to cut and transport forest growth in the land in survey no.10/2 and 112 situated at Udampur village, Kadem mandal, Adilabad district in pursuance of the application filed on 20.11.1997, as bad and illegal.

The case of the petitioner, in brief, is that the petitioner had purchased the aforesaid land in survey no.10/2 and 112, admeasuring Ac.14.31 guntas and Ac.0.20 guntas respectively totalling to Ac.15.11 guntas of Udampur village, Kadem mandal, Adilabad district and the entire records show both his patta and possession as well. Since the said land is adjacent to Reserve Forest, Kawal block, Adilabad district, there is a forest growth which is about 50 to 60 years. With a view to sell the said forest growth and transport the same, he executed the General Power of Attorney, and entered into a partnership with one D.Prabhakar Rao. Accordingly, an application was filed on 20.11.1997 to the Divisional Forest Officer, Jennaram division, Adilabad district for cutting and transporting the forest growth and the said application is being pursued by the other partner D.Prabhakar Rao. Since no action has been taken thereon, a Writ Petition No.10785 of 2001 was filed in this Court by the said Prabhakar Rao. However, the same was dismissed on 01.10.2002 on the ground that the petitioner therein is not having any locus since

the original owner is a different person. In the meanwhile, the third respondent herein passed impugned orders on 05.09.2002 rejecting the application. Hence, the present Writ Petition.

Case of the petitioner, in brief, is that the entire said land for which the application was made, is exclusively a patta land in his possession and therefore, there can not be any objection on the part of the respondents herein in granting the permission. Since the said land is not included in any manner as a forest by any of the provisions of the Forest Act or otherwise, there is no impediment in granting the permission nor any objection can be raised by the respondents. Therefore, the very rejection of the petitioner's request under the impugned orders is totally bad, illegal and void. It is further submitted that the claim of the petitioner both as to the patta and possession is substantiated by the pahanis for the year 1980-81 to 1996; order dated 22.10.2000 of the D.F.O. to conservator of forests; order dated 27.01.2001 of the said D.F.O. to conservator of forests; order dated 05.02.2001 from the Conservator of forests to Chief conservator; joint inspection report dated 15.06.2001 of the Assistant Director and Inspector of Survey & Land Records; proceedings of the D.F.O. dated 10.07.2001 to the District Collector; proceedings from the D.F.O. dated 17.10.2001 to the conservator of forests apart from the statement register of the village, Sethwar register, gazette no.17 dated 09.05.1350 fasli; proceedings dated 14.04.1998 of the D.F.O.; proceedings dated 06.05.1998 of the Govt. Pleader; proceedings dated 18.06.1998-letter from the Forest Range Officer to D.F.O.; proceedings dated 10.04.1999 of the D.F.O.; proceedings dated 22.11.2001 from the Mandal Revenue Officer, etc. Therefore, according to the petitioner, he is entitled to cut away forest growth in the said patta land, and the rejection thereof is wholly unsustainable.

Contesting the petitioner's claim, case of the respondents 1 to 3 on whose behalf counter affidavit is filed by the third respondent, is that

as per gazette notification No. 17, dated 05.05.1350 fasli and as approved vide G.O.Ms. No.261, dated 21.03.1350 fasli, the said survey no.10/2 is included in the forest area of Kawal block and it has become reserve forest as per the prohibitory order book register and area statement, and the same is under management and control of the D.F.O., Jannaram since 21.03.1350 fasli. It is further submitted that it is only after the inspection was made by the Divisional Forest Officer, Wile Life Management, Jennaram, the application has been rejected. The entire records would show that the survey no.10/2 is included in the reserve forest area. Therefore, the provisions of the Forest Conservation Act, 1980, are applicable and no forest land can be converted into non-forest produce. It is further contended that a joint survey was conducted on 21.03.2001 in the presence of Divisional Forest Officer, Assistant Director of Survey and Land Records, Forest Range Officer and on verification, it was found that the lands in question constituted within the reserve forest area of Kawal and therefore, the claim of the petitioner that these lands are shown outside the reserve forest in the said joint inspection, is totally false.

In the counter affidavit, various other proceedings have also been referred to for the purpose of showing that the land in question is included in the reserve forest area and not as a patta land. The same is also reiterated in the additional counter affidavit filed on behalf of the third respondent, to which the petitioner had filed reply once again reiterating his case as can be found from the affidavit filed in support of the Writ Petition and also asserting that the joint survey report is that the land is outside the forest area.

The learned counsel appearing on behalf of the petitioner strenuously contends that the said land is a patta land and therefore, it can not be treated as part of reserved forest area and thus, the permission could not have been refused by the respondents, more so, when on the date of the impugned order Writ Petition was pending consideration before this Court.

The learned Government Pleader by taking through the entire allegations in the counter affidavit, submits that the area was already declared as a forest area long back and therefore, the petitioner has no right in respect of any such forest.

Considering the submissions made and on perusal of the material, the main question which falls for consideration is as to whether the claim for permission to cut and transport forest growth in the aforesaid lands in survey nos. 10/2 and 112 is sustainable ?

There is no dispute to the fact that there is a reserved forest area adjacent to the land claimed by the petitioner. The petitioner asserts that it is a patta land, but according to the respondents, the said land was already included in the forest area as per the proceedings as long back as in 1350 fasli and the same was also published in Gazette no.17 dated 05.05.1350 fasli. It is the further contention on behalf of the petitioner that in the joint inspection, it was found that the land is vested in his area, whereas the said fact is denied in the counter affidavit and to show that such inspection has in fact yielded the Government to say that the land is within the reserved forest area.

Having regard to such rival assertions- one as a patta and another as the one included in the forest area, the only course left open for the petitioner is to make a proper challenge in the appropriate court of law to establish any of his proprietary rights. However, the fact remains that as long back as 1350 fasli, as pointed from out of the records of notification, the land is shown as part of reserved forest area, and except referring to *Ipse dixit* records, there is no other proper conclusive authority pointed out on behalf of the petitioner to get over the notifications issued in 1350 fasli, which show conclusively that the land has been included in the forest area. In

view of such disputed question, it is not open for this court to go into the same or give any finding thereon. The fact remains that the records disclose that the land is a part of the forest area and even the joint inspection conducted by respondents with the revenue and survey authorities, show that it is a part of reserve forest area. In view of the same, it can not be said that the petitioner has got any right to make any claim in regard to the forest growth. Therefore, the very application is not maintainable and the impugned orders of rejection, are perfectly valid. In the circumstances, it is to be held that having regard to the conclusive material as produced on behalf of the respondents herein to show that the land is a reserved forest area, it can not be said that the petitioner can seek any claim for the forest growth therein. Hence, the petitioner is not entitled to any relief as sought for in this Writ Petition. I do not find any merits in this Writ Petition.

The Writ Petition is, accordingly, dismissed. No costs.

(B.Prakash Rao,J.)

20.12.2004

DRK

Copy to:

1 The Secretary, Forest Dept., State of A.P.,
Secretariat, Hyderabad
2 Prl.Chief Conservator of Forest, Aranya Bhavan, Saifabad, Hyderabad
3 Conservator of Forest, Adilabad Circle, Adilabad
4 Joint Collector/Forest Settlement Officer, Adilabad District

5 Two CCs to the G.P. for Forest, High Court of A.P., High Court buildings, Hyderabad (o.u.t.)

6 Two CD copies.